

No. 15212

United States
Court of Appeals
for the Ninth Circuit

MIKE ERCEG,

Appellant,

vs.

FAIRBANKS SCHOOL DISTRICT, SYLVIA
RINGSTAD, D. H. DOXEY, GEORGE ED-
MONDSON and E. M. HUFFORD,

Appellees.

Transcript of Record

Appeal from the District Court
for the District of Alaska,
Fourth Division.

FILED

OCT 10 1963

PAUL P. O'BRIEN, CLERK

No. 15212

**United States
Court of Appeals**
for the Ninth Circuit

MIKE ERCEG,

Appellant,

vs.

FAIRBANKS SCHOOL DISTRICT, SYLVIA
RINGSTAD, D. H. DOXEY, GEORGE ED-
MONDSON and E. M. HUFFORD,

Appellees.

Transcript of Record

**Appeal from the District Court
for the District of Alaska,
Fourth Division.**

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Attorneys of Record	1
Appeal Bond	16
Certificate of Clerk	17
Complaint	3
Motion to Dismiss	13
Notice of Appeal	15
Order of Dismissal	14
Statement of Points	19

ATTORNEYS OF RECORD

WARREN A. TAYLOR,

Attorney at Law,

Box 200, Fairbanks, Alaska;

WILLIAM W. TAYLOR,

Attorney at Law,

Box 200, Fairbanks, Alaska;

Attorneys for Plaintiff and Appellant.

MAURICE T. JOHNSON,

Attorney at Law,

Box 1511, Fairbanks, Alaska,

Attorney for Fairbanks

School District;

HARRY O. AREND,

Attorney at Law,

P. O. Box 468, Fairbanks, Alaska,

Attorney for Sylvia Ringstad and

D. H. Doxey;

RALPH J. RIVERS,

Attorney at Law,

P. O. Box 1951, Fairbanks, Alaska,

Attorney for George Edmondson and

E. M. Hufford;

Attorneys for Defendants and

Appellees.

In the District Court for the District of Alaska,
Fourth Judicial Division

No. 9008—Civil

MIKE ERCEG,

Plaintiff,

vs.

FAIRBANKS SCHOOL DISTRICT, an Independent School District Corporation; SYLVIA RINGSTAD, D. H. DOXEY, GEORGE EDMONDSON, and E. M. HUFFORD,

Defendants.

COMPLAINT

Plaintiff alleges as follows:

I.

That at all times herein mentioned plaintiff has been and now is a resident within the Fairbanks School District and the owner of certain real property situate in said Fairbanks School District and more fully described as follows, to wit:

1. Patent No. 1101214, Mineral Survey No. 1692, which includes Claims Nos. 3, 4, 5 and 6 of First tier, Left Limit, St. Patrick Creek, and 5 below Creek Claim of a total area of 107.609 acres;

2. Patent No. 1031018, Mineral Survey No. 1988, Hoosier Claim, consisting of 12.964 acres;

3. Patent No. 900524 Mineral Survey No. 847, consisting of one-third of 140.70 acres;

3. Patent No. 113077, Mineral Survey No. 2078, consisting of Keystone and Alaska Association, and comprising an area of 44.22 acres;

5. Patent No. 899,571, Mineral Survey No. 853, consisting of Lower one-quarter of No. 22, 23 Association and 24 Association on Goldstream Creek, and comprising 82.20 acres.

That all of said mining claims are undeveloped, patented Placer claims.

II.

That the defendant is an independent school district corporation incorporated under the laws of the Territory of Alaska, with its principal place of business in Fairbanks, Alaska, and vicinity, having the power to tax real and personal property situate in said school district subject to the limitations presented by the laws of the United States and the Territory of Alaska, which provided prior to March 22, 1955, that no patented undeveloped mining ground should be valued in excess of \$500.00 per each twenty acres thereof, and that after the 22nd day of March, 1955, such mining ground should not be valued in excess of \$200.00 per twenty-acre claim.

III.

That disregarding the limitation of valuation as provided by law, the defendant did in the years of 1949 and 1950, place a valuation upon certain of the undeveloped patented placer mining claims described in Paragraph I of this complaint, as follows:

Year	Patent Number	Description	Valuation	Tax
1949	1101214	#3 below 1 T, LL	\$ 2,000.00	\$ 20.00
1949	1031018	Hoosier Claims 12 A	1,300.00	13.00
1949	1101214	5 below Cr. Cl. 16.07A	1,610.00	16.10
1949	900524	1/3 Long Ass'n. 47.A	4,700.00	47.00
1949	1113077	Keystone Ass'n. 20.A	2,000.00	20.00
1949	1113077	Alaska Ass'n. 24.22 A	2,500.00	25.00
1949	899571	Lower 1/4 of No. 22, 16 A	1,600.00	16.00
1949	899571	23 A Placer 20	2,000.00	20.00
1949	899571	24 Ass'n. 48	4,800.00	48.00
1949	1011214	4-5-6 below 1T-LL 64.5A	6,450.00	64.50
Totals.....			\$28,960.00	\$289.60

That the valuation and tax in the year 1950 were as the year 1949 hereinabove set forth, to-wit: Total valuation, \$28,960.00; Total tax, \$289.60.

III.

That in the years of 1951-1952 and 1953, the said mining claims of plaintiff were assessed by the Assessor of the defendant, Fairbanks School District, as follows:

1951.....	Valuation: \$22,400.00	Tax Levy: \$224.00
1952.....	Valuation: \$22,400.00	Tax Levy: \$224.00
1953.....	Valuation: \$22,400.00	Tax Levy: \$224.00

IV.

That on or about May and June, 1953, the defendant, Fairbanks School District, did offer at public sale the following described claims for the payment of taxes, interest, penalty, advertising, legal, and further interest as follows:

Patent No. 1101214, 4-5-6 Below 1T-LL St. Patrick Creek:

Year	Taxes	Penalty	Interest	Advertising & Legal	Total
1949	\$64.80	\$6.48	\$29.13	\$57.87	\$158.28
1950	64.80	6.48	20.43	52.86	144.57
					\$302.85
Plus: 15% interest.....					91.28
Total.....					\$394.13

That said claims were duly offered at public sale and sold to one E. M. Hufford for \$394.13, that being the best and highest bid for cash.

V.

That on the 22nd day of June, 1954, the defendant, Fairbanks School District, did offer at public sale the following described claims for the payment of taxes, interest, penalty, advertising and legal, and further interest as follows:

Patent No. 1031018, Hoosier Placer Claim on St. Patrick Creek, 12.964 acres:

Year	Taxes	Penalty	Interest	Advertising & Legal	Total
1951	\$13.00	\$1.30	\$ 4.08	\$25.50	\$ 43.58
1952	13.00	1.30	2.50	25.00	42.30

Patent No. 1101214, No. 3 Below 1T-LL, St. Patrick Creek, 18.5 acres:

Year	Taxes	Penalty	Interest	Advertising & Legal	Total
1951	\$19.00	\$1.90	\$ 5.97	\$25.50	\$52.37
1952	19.00	1.90	3.65	25.50	50.05

Patent No. 1101214, No. 5 Below Creek Claim, St. Patrick Creek, 16.1 acres:

Year	Taxes	Penalty	Interest	Advertising & Legal	Total
1951	\$16.00	\$1.60	\$ 5.03	\$25.00	\$48.13
1952	16.00	1.60	3.07	25.50	46.17

Patent No. 1113077, Placer Claim, Keystone on St. Patrick Creek, 20 acres:

Year	Taxes	Penalty	Interest	Advertising & Legal	Total
1951	\$20.00	\$2.00	\$ 6.29	\$17.00	\$45.29
1952	20.00	2.00	3.85	17.00	42.85

Patent No. 1113077, Placer Claim, Alaska Association on St. Patrick Creek, 24.22 acres.

Year	Taxes	Penalty	Interest	Advertising & Legal	Total
1951	\$25.00	\$2.50	\$ 7.86	\$17.00	\$52.36
1952	25.00	2.50	4.81	17.00	49.31

Patent No. 900524, Placer Claim Long Association on St. Patrick Creek, 140.7 acres, one-third plaintiff's:

Year	Taxes	Penalty	Interest	Advertising & Legal	Total
1951	\$47.00	\$4.70	\$14.77	\$25.50	\$91.97
1952	47.00	4.70	9.04	25.00	86.24

Patent No. 899571, Placer Claim 23A on Goldstream, 19.30 acres:

Year	Taxes	Penalty	Interest	Advertising & Legal	Total
1951	\$20.00	\$2.00	\$ 6.29	\$17.00	\$45.29
1952	20.00	2.00	3.85	17.00	42.85

Patent No. 899571, Placer Claim, 24 Association on Goldstream Creek, 47.40 acres:

Year	Taxes	Penalty	Interest	Advertising & Legal	Total
1951	\$48.00	\$4.80	\$15.08	\$17.00	\$84.88
1952	48.00	4.80	9.23	17.00	79.03

Patent No. 899571 Placer Claim Lower $\frac{1}{4}$ of 22A on Goldstream Creek, 15.50 acres:

Year	Taxes	Penalty	Interest	Advertising & Legal	Total
1951	\$16.00	\$1.60	\$ 5.03	\$17.00	\$39.63
1952	16.00	1.60	3.07	17.00	37.67

VI.

That at said public sale held on the 22nd day of June, 1954, the defendant, Fairbanks School District, did sell to the following named persons certain claims hereinbefore mentioned at the price bid named herein:

To: Sylvia Ringstad, Fairbanks, Alaska,

Patent No. 1031018, Hoosier Placer Claim on St. Patrick Creek for \$100.00;

Patent No. 1101214, 3 below 1T-LL, Placer Claim on St. Patrick Creek for \$105.00;

Patent No. 1113077, Keystone Placer Claim on St. Patrick Creek for \$110.00.

To: D. H. Doxey, of Fairbanks, Alaska,

Patent No. 1101214, 5 below Creek Placer Claim on St. Patrick Creek for \$95.00.

To: George Edmondson, of Fairbanks, Alaska,

Patent No. 1113077, Alaska Association Placer Claim on St. Patrick Creek for \$105.00;

Patent No. 899571, Lower $\frac{1}{4}$ of 22A Placer Claim on Goldstream Creek for \$80.00;

Patent No. 899571, 23A Placer Claim on Goldstream Creek for \$90.00.

To: Fairbanks School District,

Patent No. 900524, Long Association Placer Claim on St. Patrick Creek for \$178.21;

Patent No. 899571, 24 Association Placer Claim on Goldstream Creek for \$163.91.

VII.

That on the 19th day of June, 1953, the plaintiff paid to the defendant, Fairbanks School District, the sum of \$1,057.87, the same being paid under protest, which protest was endorsed upon the reverse side of the checks given in payment. That the said sum of \$1,057.87 was sufficient to pay all back taxes and leave a substantial balance for future taxes on said mining claims, as the maximum tax that legally could have been levied against all the said claims was \$70.00 for each taxable year.

Title 48, Section 78, U. S. Code Annotated, provides as follows:

“All taxes shall be uniform upon the same class of subjects and shall be levied and collected under the general laws, and assessments shall be according to the true value thereof, except that unpatented mining claims, and undeveloped patented mining claims, which are also unimproved, may be valued at the price paid the United States, or at a flat rate fixed by the legislature.”

Chapter 10, Session Laws of Alaska, 1949, in Section 3, provides as follows:

“* * * For the purposes of this section the assessed value of unimproved, unpatented mining claims which are not producing, and nonproducing patented mining claims upon which the improvements originally required for patent have become useless through deterioration, removal or otherwise, is hereby fixed at \$500.00 per each 20 acres or fraction of each such claim * * *”

Section 4 of Chapter 10, Session Laws of Alaska, 1949, provides:

“The tax levied under Section 3 upon the property within the limits of an incorporated city or town, independent school district or incorporated school district in the Territory shall be assessed, collected and enforced in the manner prescribed by the property tax law of the municipality or district * * *”

VIII.

That at all times herein mentioned the defendant, Fairbanks School District, has placed a ficti-

tious, confiscatory, arbitrary, capricious and unlawful valuation on mining claims, as follows:

Real property, other than mining claims, was assessed at 75% of its full and true value;

Unpatented lode claims assessed at \$50.00 per acre;

Patented lode claims assessed at \$250.00 per acre;

Unpatented placer claims assessed at \$25.00 per acre;

Patented placer claims assessed at \$100.00 per acre;

Tax was levied upon 100% of said fictitious and unlawful valuation.

IX.

That the assessment of said mining claims of plaintiff were each made arbitrarily and capriciously and without regard to their value and without regard to the limitation of the valuation established by the laws of the United States of America and the Territory of Alaska on undeveloped patented mining claims as hereinbefore set forth.

X.

That on the 17th day of June, 1955, the plaintiff, by his agent, mailed to the defendant School District's Tax Collector, a check in the sum of \$707.25 in payment of the redemption of all those claims sold for taxes in June, 1954. That the said check was returned to plaintiff with a letter in which he was advised that the amount required to redeem said claims was \$2,034.67. That a summary of

charges attached to said letter indicated that of that sum \$517.28 was interest; \$484.73 was legal fees and advertising; and \$79.16 was penalties; and only \$953.60 was taxes based upon an assessment of \$100.00 per acre.

XI.

That based upon the maximum valuation of patented, undeveloped placer mining claims provided by Chapter 10, Session Laws of Alaska, 1949, which might be placed upon said type of claims, the greatest amount of tax that could be imposed in any one year upon the mining claims of plaintiff would be \$70.00.

That based upon the provisions of Section 78, Title 48, U.S.C.A., and Section 48-1-1 ACLA, taxes may be levied upon the class of mining claims herein mentioned according to the price paid the United States for the same by the owner. The price to be paid the United States, according to Section 37, Title 30, U.S.C.A., and Section 47-3-84 ACLA, 1949, for such mineral claims is \$2.50 per acre in the event there is no vein or lode in the claims. Therefore, the maximum tax that could be levied by defendant school district was fifty cents per claim for each taxable year.

Therefore, taking the United States Statutes into consideration, the maximum tax that could be levied upon plaintiff's undeveloped, patented placer mining claims hereinbefore described for the years 1949, 1950, 1951, 1952, 1953 and 1954 would be \$7.23 per year, or \$43.38 for all of said taxable years.

Taking into consideration the laws of the Territory of Alaska, establishing a maximum valuation on undeveloped patented mining claims at \$500.00 for each of such claims, the annual levy would be \$70.00, and the total for all of said taxable years would be \$420.00.

XII.

That there is now due and owing from said Fairbanks School District to the plaintiff the sum of \$1,014.49, together with interest on said sum at the rate of 6% per annum from June 26, 1953.

Wherefore, plaintiff prays for a decree of this Court as follows:

(a) Declaring the assessment of valuation of plaintiff's property, and levy of tax thereon, illegal and void;

(b) Setting aside and vacating the tax sales of plaintiff's mining claims to defendants, Sylvia Ringstad, E. M. Hufford, George Edmondson, David H. Doxey, and Fairbanks School District;

(c) That the said taxes were illegally collected from the plaintiff;

(d) That the said assessments were illegally made;

(e) That the defendants be adjudged to restore to plaintiff full possession and enjoyment of all his property aforesaid;

(f) That the plaintiff have judgment against defendant, Fairbanks School District, in the sum of \$1,074.49, with interest thereon at the rate of 6% per annum from June 26, 1953.

(g) For such other and further relief as to the Court may seem just and equitable.

(h) For reasonable attorney fees and costs of this action.

TAYLOR & TAYLOR,
Attorneys for Plaintiff;

By /s/ WARREN A. TAYLOR,
Of Counsel.

Duly verified.

[Endorsed]: Filed April 4, 1956.

[Title of District Court and Cause.]

MOTION TO DISMISS

Now comes the defendant, Fairbanks School District, an independent school district corporation, above-named, by Maurice T. Johnson, its attorney, under provisions of Rule 12(b), Federal Rules of Civil Procedure, 28 USCA, and respectfully moves the Court to dismiss the above-entitled cause upon the ground that the complaint fails to state a claim upon which relief can be granted for the following reasons:

(a) That the plaintiff has failed to comply with the provisions of Section 16-1-124, ACLA 1949.

(b) That the plaintiff has failed to comply with the provisions of Section 16-1-131, ACLA 1949.

This motion is based upon the records and files in this case and upon the brief of the defendant, Fairbanks School District, filed in support hereof.

Dated at Fairbanks, Alaska, this 19th day of April, 1956.

/s/ MAURICE T. JOHNSON,
Attorney for Defendant,
Fairbanks School District.

Receipt of copy acknowledged.

[Endorsed]: Filed April 20, 1956.

In the District Court for the District of Alaska,
Fourth Judicial Division

No. 9008 Civil

MIKE ERCEG,

Plaintiff,

vs.

FAIRBANKS SCHOOL DISTRICT, an Independent School District Corporation; SYLVIA RINGSTAD, D. H. DOXEY, GEORGE EDMONDSON, and E. M. HUFFORD,

Defendants.

ORDER OF DISMISSAL

This cause having been heretofore taken under advisement on the motion of the defendants Fairbanks School District, D. H. Doxey, and E. M. Hufford, to dismiss the complaint, after due consideration of the briefs filed herein and the Court being fully advised in the premises, said motion to dismiss is granted for the reason that the complaint

fails to state a claim on which relief can be granted,
and

It Is Ordered that this action be and it is hereby
dismissed.

Dated May 29, 1956.

/s/ VERNON D. FORBES,
District Judge.

[Endorsed]: Filed and entered May 29, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Mike Erceg, the
plaintiff above-named, hereby appeals to the United
States Court of Appeals for the Ninth Circuit from
the Order of Dismissal entered in this action on
or about the 29th day of May, 1956.

Dated at Fairbanks, Alaska, this 13th day of
June, 1956.

TAYLOR & TAYLOR,

By /s/ WARREN A. TAYLOR,
Of Counsel for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed June 22, 1956.

[Title of District Court and Cause.]

APPEAL BOND

Mike Erceg, appellant herein, as principal, and Maurice J. Killion and Robert J. Rogers, as sureties, appearing and submitting to the jurisdiction of the Court, hereby undertake for themselves, and each of them, their, and each of their, heirs, executors, administrators, successors and assigns, to make good all taxable costs and charges, not exceeding the sum of Two Hundred Fifty Dollars (\$250.00), that the appellees may be put to, or allowed, if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified.

The said sureties hereby irrevocably appoint the clerk of the above-entitled Court as their agent upon whom any papers affecting their liability on this undertaking may be served.

Signed, sealed and delivered this 20th day of June, 1956.

/s/ MIKE ERCEG,
Principal, Appellant.

/s/ MAURICE J. KILLION,

/s/ ROBERT J. ROGERS,
Sureties.

United States of America,
Territory of Alaska—ss.

Maurice J. Killion and Robert J. Rogers each being duly sworn, say: That I am a surety on the foregoing Appeal Bond; that I am a resident within the District of Alaska; that I am not a counselor or attorney at law, deputy marshal, commissioner, clerk of any court, or other officer of any court, and that I am worth the sum of \$250.00 over and above all debts and liabilities and property exempt from execution.

/s/ MAURICE J. KILLION,

/s/ ROBERT J. ROGERS.

Subscribed and sworn to before me this 20th day of June, 1956.

[Seal] /s/ ELVA JACKSON,
Notary Public in and for
Alaska.

My commission expires: 2/23/60.

Receipt of copy acknowledged.

[Endorsed]: Filed June 22, 1956.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, John B. Hall, Clerk of the above-entitled Court, do hereby certify that the following list comprises all proceedings in this cause listed on the

plaintiff's and appellant's Designation of Contents of Record on Appeal, viz:

1—Complaint.

2—Motion to Dismiss.

3—Brief in Support of Defendant Fairbanks School District's Motion to Dismiss.

4—Brief in Opposition to Defendant's Motion to Dismiss.

5—Order of Dismissal.

6—Notice of Appeal.

7—Statement of Points.

8—Designation of Contents of Record on Appeal.

9—Appeal Bond.

Witness my hand and the seal of the above-entitled Court this 21st day of July, 1956.

[Seal] /s/ JOHN B. HALL,
 Clerk of Court.

[Endorsed]: No. 15212. United States Court of Appeals for the Ninth Circuit. Mike Erceg, Appellant, vs. Fairbanks School District, Sylvia Ringstad, D. H. Doxey, George Edmondson and E. M. Hufford, Appellees. Transcript of Record. Appeal from the District Court for the District of Alaska, Fourth Division.

Filed July 26, 1956.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

[Title of District Court and Cause.]

STATEMENT OF POINTS

The points upon which appellant will rely on appeal are:

1. That the Court erred in sustaining defendants' Motion for Dismissal of the action.
2. That the Order of the Court dismissing the action was contrary to law.

TAYLOR & TAYLOR,

By /s/ WARREN A. TAYLOR,
Of Counsel for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed July 9, 1956.

